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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,127	02/14/2002	Douglas Lee Goedecken	PIL0140/US	8881
33072	7590	04/11/2005	EXAMINER	
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/076,127

Applicant(s)

GOEDEKEN ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20, 22-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The 112 second paragraph rejection of claim 19 is maintained. In the response filed 1/18/05, applicant argues "partially unproofed" is easily understood to mean that some proofing has occurred, however, the dough composition would have an amount of inactivated leavening agent to just partially increase the volume of the product. The examiner respectfully disagrees. Proofing means the dough is subjected to proofing and unproof means the dough is not subjected to proofing. Applicant has not submitted evidence to show the definition of "partially unproofed". If applicant wants to claim that some proofing has occurred, it is suggested applicant uses the term "partially proof".

Claims 1-20, 22-25 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Book et al in view of Chawan, Chawan et al and Laughlin et al for the same reason set forth in the previous office action.

In the response filed Jan. 18, 2005, applicant states Chawan teaches a pasta or pasta foodstuff containing PGA and the PGA is added to decrease the starch loss of pasta. Applicant argues pasta foodstuff is not the same as a leavened dough and one would not look to Chawan to modify the Book product. This argument is not persuasive. Chawan does not only disclose pasta foodstuff. Chawan also discloses other products such as pancakes, waffles, breads, pizza, tortillas, pastries, dough-wraps. All these products are known to have leavening agent; thus, they are considered as leavened dough. The main purpose of adding the PGA is to control the glucose release and thus to reduce the glycemic index. Thus, one would look to Chawan to modify the Book product when one wants to obtain the health benefit taught by Chawan. How the PGA

functions to achieve the reduction of the glycemic index is not an issue to be considered. The claims require a dough containing PGA; one would be motivated to add PGA for the reason taught by Chawan. The claims do not place any limitation on why the PGA is added to the dough.

With respect to the Chawan et al reference, applicant argues there is no teaching nor suggestion that PGA can or should be used in leavened dough system. While Chawan et al mainly discuss pasta product, they also disclose on column 2 lines 46-50, "the present invention is also directed to food compositions comprising flour and PGA, which might not be pasta or pasta-like, products made from a PGA/flour dough which are baked or fried are also obtained by the present invention". From this disclosure, it is clear that the addition of PGA is not limited to pasta. Most dough products contain leavening agent; thus, there is no contraindication to adding PGA to dough containing leavening agent. Applicant further argues the PGA in applicants' formulation is not for textural improvement but rather for springiness while maintaining the gluten structure of the leavened dough. The claims do not have any limitation in the correlation of PGA and springiness and gluten structure. Furthermore, it is only required to show in a 103 rejection why it would have been obvious to add an ingredient, even if it is for reason that is different from the one claimed.

Applicant argues the rejection is based on improper hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long

as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant's arguments filed 1/18/05 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 6, 2005

*Xentron*  
*Group 1700*